Faeth, Lisa [Faeth.Lisa@epa.gov] From:

4/29/2019 3:17:05 PM Sent:

To: Anderson, Steve [Anderson.Steve@epa.gov]; Askinazi, Valerie [Askinazi.Valerie@epa.gov]; Baptist, Erik

[Baptist.Erik@epa.gov]; Barkas, Jessica [barkas.jessica@epa.gov]; Beck, Nancy [Beck.Nancy@epa.gov]; Bertrand,

Charlotte [Bertrand.Charlotte@epa.gov]; Blair, Susanna [Blair.Susanna@epa.gov]; Buster, Pamela

[Buster.Pamela@epa.gov]; Canavan, Sheila [Canavan.Sheila@epa.gov]; Caraballo, Mario [Caraballo.Mario@epa.gov];

Carroll, Megan [Carroll.Megan@epa.gov]; Cherepy, Andrea [Cherepy.Andrea@epa.gov]; Christian, Myrta

[Christian.Myrta@epa.gov]; Corado, Ana [Corado.Ana@epa.gov]; Davies, Clive [Davies.Clive@epa.gov]; Dekleva,

Lynn [dekleva.lynn@epa.gov]; Devito, Steve [Devito.Steve@epa.gov]; Doa, Maria [Doa.Maria@epa.gov]; Drewes,

Scott [Drewes.Scott@epa.gov]; Dunn, Alexandra [dunn.alexandra@epa.gov]; Dunton, Cheryl

[Dunton.Cheryl@epa.gov]; Edelstein, Rebecca [Edelstein.Rebecca@epa.gov]; Edmonds, Marc [Edmonds.Marc@epa.gov]; Elwood, Holly [Elwood.Holly@epa.gov]; Faeth, Lisa [Faeth.Lisa@epa.gov]; Fan, Shirley

[Fan.Shirley@epa.gov]; Farquharson, Chenise [Farquharson.Chenise@epa.gov]; Fehrenbacher, Cathy

[Fehrenbacher.Cathy@epa.gov]; Feustel, Ingrid [feustel.ingrid@epa.gov]; Frank, Donald [Frank.Donald@epa.gov];

Gibson, Hugh [Gibson.Hugh@epa.gov]; Gimlin, Peter [Gimlin.Peter@epa.gov]; Gorder, Chris

[Gorder.Chris@epa.gov]; Gordon, Brittney [Gordon.Brittney@epa.gov]; Grant, Brian [Grant.Brian@epa.gov]; Gray, Shawna [Gray.Shawna@epa.gov]; Groeneveld, Thomas [Groeneveld.Thomas@epa.gov]; Guthrie, Christina

[Guthrie.Christina@epa.gov]; Hanley, Mary [Hanley.Mary@epa.gov]; Helfgott, Daniel [Helfgott.Daniel@epa.gov];

Henry, Tala [Henry, Tala@epa.gov]; Kapust, Edna [Kapust.Edna@epa.gov]; Kemme, Sara [kemme.sara@epa.gov]; Koch, Erin [Koch.Erin@epa.gov]; Krasnic, Toni [krasnic.toni@epa.gov]; Lavoie, Emma [Lavoie.Emma@epa.gov]; Lee,

Mari [Lee.Mari@epa.gov]; Lee, Virginia [Lee.Virginia@epa.gov]; Leopard, Matthew (OEI)

[Leopard.Matthew@epa.gov]; Liva, Aakruti [Liva.Aakruti@epa.gov]; Lobar, Bryan [Lobar.Bryan@epa.gov]; Mclean,

Kevin [Mclean.Kevin@epa.gov]; Menasche, Claudia [Menasche.Claudia@epa.gov]; Morris, Jeff

[Morris.Jeff@epa.gov]; Moss, Kenneth [Moss.Kenneth@epa.gov]; Mottley, Tanya [Mottley.Tanya@epa.gov]; Moyer,

Adam [moyer.adam@epa.gov]; Myers, Irina [Myers.Irina@epa.gov]; Myrick, Pamela [Myrick.Pamela@epa.gov];

Nazef, Laura [Nazef.Laura@epa.gov]; Ortiz, Julia [Ortiz.Julia@epa.gov]; Owen, Elise [Owen.Elise@epa.gov]; Parsons,

Doug [Parsons.Douglas@epa.gov]; Passe, Loraine [Passe.Loraine@epa.gov]; Pierce, Alison [Pierce.Alison@epa.gov];

Pratt, Johnk [Pratt.Johnk@epa.gov]; Price, Michelle [Price.Michelle@epa.gov]; Reese, Recie [Reese.Recie@epa.gov]; Reisman, Larry [Reisman.Larry@epa.gov]; Rice, Cody [Rice.Cody@epa.gov]; Richardson, Vickie

[Richardson.Vickie@epa.gov]; Ross, Philip [Ross.Philip@epa.gov]; Sadowsky, Don [Sadowsky.Don@epa.gov];

Santacroce, Jeffrey [Santacroce.Jeffrey@epa.gov]; Saxton, Dion [Saxton.Dion@epa.gov]; Scarano, Louis

[Scarano.Louis@epa.gov]; Scheifele, Hans [Scheifele.Hans@epa.gov]; Schmit, Ryan [schmit.ryan@epa.gov]; Schweer,

Greg [Schweer.Greg@epa.gov]; Scott Selken [spselken@up.com]; Scott, Elizabeth [Scott.Elizabeth@epa.gov]; Selby-

Mohamadu, Yvette [Selby-Mohamadu.Yvette@epa.gov]; Seltzer, Mark [Seltzer.Mark@epa.gov]; Sheehan, Eileen

[Sheehan.Eileen@epa.gov]; Sherlock, Scott [Sherlock.Scott@epa.gov]; Simons, Andrew [Simons.Andrew@epa.gov];

Sirmons, Chandler [Sirmons.Chandler@epa.gov]; Slotnick, Sue [Slotnick.Sue@epa.gov]; Smith, David G.

[Smith.DavidG@epa.gov]; Smith-Seam, Rhoda [smith-seam.rhoda@epa.gov]; Stedeford, Todd [Stedeford.Todd@epa.gov]; Stevens, Katherine [stevens.katherine@epa.gov]; Strauss, Linda

[Strauss.Linda@epa.gov]; Symmes, Brian [Symmes.Brian@epa.gov]; Tanner, Barbara [Tanner.Barbara@epa.gov];

Thompson, Tony [Thompson.Tony@epa.gov]; Tierney, Meghan [Tierney.Meghan@epa.gov]; Tillman, Thomas [Tillman.Thomas@epa.gov]; Tomassoni, Guy [Tomassoni.Guy@epa.gov]; Tran, Chi [Tran.Chi@epa.gov]; Turk, David

[Turk.David@epa.gov]; Vendinello, Lynn [Vendinello.Lynn@epa.gov]; Wallace, Ryan [Wallace.Ryan@epa.gov];

Wheeler, Cindy [Wheeler.Cindy@epa.gov]; Widawsky, David [Widawsky.David@epa.gov]; Williams, Aresia

[Williams.Aresia@epa.gov]; Williams, Bridget [Williams.Bridget@epa.gov]; Williamson, Tracy

[Williamson.Tracy@epa.gov]; Wills, Jennifer [Wills.Jennifer@epa.gov]; Wise, Louise [Wise.Louise@epa.gov]; Wolf,

Joel [Wolf.Joel@epa.gov]; Wright, Tracy [Wright.Tracy@epa.gov]; Yowell, John [yowell.john@epa.gov]

Subject: News Articles (For EPA Distribution Only)

BNA DAILY ENVIRONMENT REPORT ARTICLES

World's First Bottle-Deposit Program Lagging Others, Report Says

By James Munson

Posted April 26, 2019, 5:51 PM

British Columbia, the world's first jurisdiction to encourage recycling beverage containers with financial deposits, has fallen behind global counterparts and loses one-fifth of containers to landfills and the environment each year, an advocacy group said April 26.

FMC Beats Asbestos Claims By Estate of Shipyard Worker

By Peter Hayes

Posted April 26, 2019, 11:06 AM

FMC Corp. and several other companies won dismissal of asbestos claims by the estate of a shipyard worker because they were untimely.

INSIDEEPA.COM ARTICLES

Court Faults EPA's 'Nonsensical' Elimination Of TSCA Rule's CBI Provision

A federal court has rejected Trump EPA efforts to drop a provision from its rule re-setting the Toxic Substances Control Act (TSCA) inventory that had required companies to substantiate a category of confidential business information (CBI) claims, finding its "explanation for excising that criterion was, nonsensically, a denial that it had done so."

Senators Seek Broad GAO Probe Of DOD's PFAS Liabilities, Policy Stance

The bipartisan leadership of the Senate governmental affairs committee is asking the Government Accountability Office (GAO) to open a probe into the environmental liabilities facing federal agencies such as the Defense Department (DOD) as they grapple with cleanup of the emerging contaminants per- and polyfluoroalkyl substances (PFAS).

GREENWIRE ARTICLES

Enviros notch partial win on TSCA secrecy claims

Ellen M. Gilmer, E&E News reporter

Published: Friday, April 26, 2019



The E. Barrett Prettyman Federal Courthouse, which houses the U.S. Court of Appeals for the District of Columbia Circuit. AgnosticPreachersKid/Wikipedia

Environmentalists scored a partial victory today over the Trump administration's update to Toxic Substances Control Act rules.

EPA violated federal law when it crafted a 2017 provision that made it easier for companies to keep chemical information secret, the U.S. Court of Appeals for the District of Columbia Circuit <u>ruled</u>, while tossing many other environmental objections. The suit from the Environmental Defense Fund was filed in 2017.

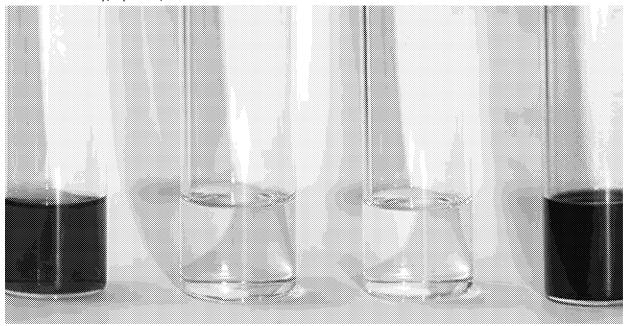
Mandated by Congress, EPA's TSCA update rule refreshed the federal inventory of chemicals used in the United States and made some changes to how companies request to keep certain details under wraps.

https://www.eenews.net/greenwire/2019/04/26/stories/1060223691

Dems urge EPA to protect workers from deadly paint stripper

Ariana Figueroa, E&E News reporter

Published: Friday, April 26, 2019



Groups have sued EPA over inaction on methylene chloride. LHcheM/Wikimedia Commons

Senate Democrats are pushing EPA to protect workers from methylene chloride after the agency excluded that population from a consumer sales ban on paint strippers containing that substance.

Sen. Tom Carper of Delaware, the ranking member on the Environment and Public Works Committee, and Minority Leader Chuck Schumer of New York, along with 20 other Senate Democrats, sent a <u>letter</u> today to EPA Administrator Andrew Wheeler and Assistant Administrator Alexandra Dunn on the agency's final rule banning methylene chloride in consumer products.

Methylene chloride can quickly kill workers if they aren't wearing a respirator in well-ventilated space. The rule, issued last month, does not ban the sale of paint strippers containing methylene chloride for use in commercial settings ($\underline{E\&E}$ News PM, March 15).

"While EPA's decision to ban consumer uses of this chemical is a welcome and overdue step, the decision to exclude commercial uses of the chemical from the ban leaves workers (more than 50 of whom have already been killed due to exposures to this chemical) without the protection they need and the law requires," the senators wrote. "We urge you to immediately move to finalize a ban that will eliminate the unreasonable risks posed by commercial uses of methylene chloride paint strippers."

The Democrats argue that under the reformed Toxic Substances Control Act, workers are legally considered a vulnerable population in need of greater protections.

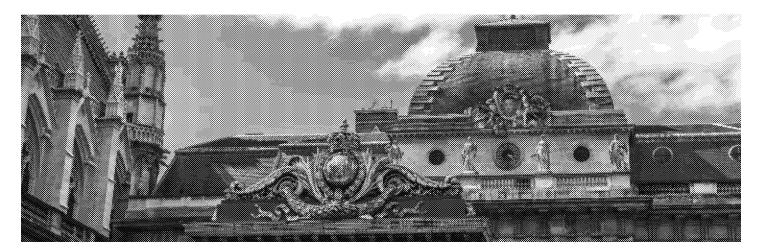
https://www.eenews.net/greenwire/2019/04/26/stories/1060223613

CHEMICAL WATCH ARTICLES

Expert Focus: The impact of the EU's glyphosate court ruling

29 April 2019 / Europe

Olivia Jamison, an environment law partner at CMS in London, examines the impact of the General Court of the European Union ruling in Heidi Hautala and Others v European Food Safety Authority.



On 7 March the General Court of the European Union ruled on two legal challenges concerning an EU body's refusal to allow access to studies relating to glyphosate.

Whilst relating to the chemical product's use as a plant protection product, the decision should be of wider interest. It is an important ruling for how all EU institutions should handle access to information requests, the meaning of "emissions to the environment" and a reminder of the balancing interests considered in such requests.

'It may serve as a reminder of the potential breadth of interpretation given to information relating to "emissions to the environment"

Some may not be surprised by the approach and outcome, but for others it may serve as a reminder of the potential breadth of interpretation given to information relating to "emissions to the environment".

The background to the judgment and the key findings of relevance are set out below.

The background

In 2014 and 2017 two separate applications were made to the European Food Safety Agency (Efsa) to gain access to studies relating to the renewal of the active substance glyphosate pursuant to two European Regulations.

Firstly, Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, (the Access to Documents Regulation) and secondly, Regulation (EC) 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (the Aarhus Regulation).

Both applications were rejected in part by Efsa and the applicants sought a ruling annulling those decisions.

The first application

An individual, Anthony C Tweedale, submitted a request for access to two "key studies" used in order to set glyphosate's acceptable daily intake (ADI). In refusing the request, Efsa decided that the studies were covered by an exception

provided by the Access to Documents Regulation, relating to the protection of commercial interests, including intellectual property rights, and that their full protection was also the direct consequence of their classification as 'confidential' under the <u>Aarhus Regulation</u>.

Efsa considered that disclosure of the requested studies would reveal the owners' know-how relating to scientific expertise and their commercial strategy, including their know-how for the dossier compilation, and would undermine their commercial interests. Efsa decided that the public interest in having access to the scientific information relating to the safety of the active substance was fully satisfied by the publication of the public version of the renewal assessment report (available on the Efsa website).

When asked to reconsider its decision, Efsa stated that the requested studies did not constitute information which 'relates to emissions into the environment' for the purposes of the Aarhus Regulation and therefore disclosure did not override commercial interests.

Some time later, in 2017, Efsa adopted a new decision annulling and replacing the earlier decision and granting partial access to the requested studies. Efsa provided the raw data and findings of the requested studies considering that the confidentiality claims by the owners of those studies did not apply to that information.

However, Efsa considered that: (i) parts of the requested studies (ii) information relating to 'scientific know-how' and (iii) the annexes and other parts of the requested studies, including the protocols followed, were protected by the exception relating to the protection of commercial interests under the Access to Documents Regulation.

Efsa stated that it had weighed up the interests at stake in accordance with the regulations and had concluded that there was no overriding public interest in disclosure of the requested studies. It considered that information provided satisfied the public's need to be informed and made it possible to reproduce its assessment, whilst protecting the interests of the owners of the requested reports. Finally, Efsa considered that the parts of the requested studies which were not disclosed did not contain information concerning emissions in the environment, or any information concerning emissions or releases into, or their effect on the environment, and that the presumption of disclosure laid down in the <u>Aarhus Regulation</u> was therefore not applicable.

The second application

MEPs requested the studies used by Efsa to assess the carcinogenicity of glyphosate and its representative formulation in their entirety. The renewal of the approval of the active substance glyphosate was conditional on the outcome of the requested studies.

Amongst the disclosure, Efsa provided only partial access to the 12 'most crucial' studies for the peer review and its conclusion that glyphosate is unlikely to pose carcinogenic hazard to humans for largely the same reasons as in the Tweedale case.

The rulings

The General Court found that EFSA infringed the Access to Documents Regulation and the Aarhus Regulation by failing to recognise that the requested studies could be classified as information which 'relates to emissions into the environment' for the purposes of the latter regulation.

'The application of the exception to disclosure based on the protection of commercial interests must be waived where there is an overriding public interest'

The application of the exception to disclosure based on the protection of commercial interests must be waived where there is an overriding public interest.

Under the Aarhus Regulation, an overriding public interest in disclosure is deemed to exist where the information requested 'relates to emissions into the environment'.

In arriving at its decisions the following points were noted:

- The developmental toxicity studies were used to renew the approval of the active substance. On the basis of the requested studies, the effects of exposure to glyphosate on human health were determined. The ADI being 'the estimate of the amount of substances in food expressed on a body weight basis, that can be ingested daily over a lifetime, without appreciable risk to any consumer on the basis of all known facts at the time of evaluation, taking into account sensitive groups within the population (eg, children and the unborn)'. Further, the no-observed adverse effect levels established made it possible to establish the 'acute reference dose' (ARfD), 'the estimate of the amount of substance in food, expressed on a body weight basis, that can be ingested over a short period of time, usually during one day, without appreciable risk to the consumer on the basis of the data produced by appropriate studies and taking into account sensitive groups within the population (eg, children and the unborn);
- The objective of the Aarhus Regulation is to ensure access to information concerning factors, such as emissions affecting or likely to affect elements of the environment, in particular air, water and soil. The concept of information which 'relates to emissions into the environment' cannot be limited to information concerning emissions actually released into the environment when the plant protection product or active substance in question is used on plants or soil, where those emissions depend, on the quantities of product actually used by farmers and the exact composition of the final product marketed;
- Although the placing on the market of a product or substance is not sufficient in general for it to be concluded that that product or substance will necessarily be released into the environment and that information concerning the product or substance 'relates to emissions into the environment', the situation is different as regards to a product such as a plant protection product, and the substances which that product contains, which, in the course of normal use, are intended to be released into the environment by virtue of their very function. In that case, foreseeable emissions, under normal or realistic conditions of use, from the product in question or from the substances which that product contains, into the environment are not hypothetical and are covered by the concept of 'emissions into the environment';
- Information which 'relates to emissions into the environment' is not limited to information which makes it
 possible to assess the emissions as such, namely information concerning the nature, composition, quantity, date
 and place of those emissions, but also data concerning the medium to long-term consequences of those
 emissions on the environment;
- Information which 'relates to emissions into the environment' is not limited to information which makes it
 possible to assess the emissions as such namely information concerning the nature, composition, quantity, date
 and place of those emissions, but also data concerning the medium to long-term consequences of those
 emissions on the environment; and
- For the studies to be classified as information which 'relates to emissions into the environment' for the purposes
 of the Aarhus Regulation, what matters is not so much the conditions in which those studies were carried out, in
 particular whether or not they were carried out in a laboratory, but their purpose.

The implications

The General Court held that the public interest in accessing information on emissions into the environment is specifically to know not only what is, or foreseeably will be, released into the environment, but also to understand the way in which the environment could be affected by the emissions in question.

The General Court's rejection of Efsa's tightly drawn definition of "emissions into the environment" and interpretation of it to include data concerning the medium to long-term consequences of those emissions on the environment will give future applications for access to information greater leverage and result in increased disclosure of supporting studies.



Olivia Jamison

Environmental law partner, CMS Cameron McKenna Nabarro Olswang LLP

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- Court confirms companies' right to confidentiality
- EU Commission asked to complete study on Aarhus Convention

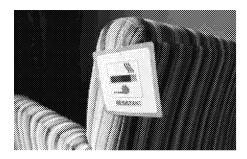
Further Information:

- Judgment of the General Court: Heidi Hautala and Others v European Food Safety Authority
- Case T-716/14, Tweedale v Efsa
- Regulation (EC) 1367/2006
- Access to Documents Regulation
- Efsa glyphosate information
- · Aarhus Regulation information
- Regulation (EC) No 1049/2001

Skin contact main exposure route for flame retardants in furniture, study suggests

Little release from polymer-integrated retardants

29 April 2019 / Exposure monitoring & measurement, Product testing, United States



Human exposure to flame retardants in upholstered furniture comes mainly from skin contact, followed by ingestion and inhalation, according to a study at Emory University, US, published by safety science company Underwriters Laboratories (UL).

The tests also revealed that a proprietary 'reactive' (polymer integrated) flame retardant is not released in measurable levels from upholstered furniture during normal use, unlike traditional organophosphate flame retardants.

The novel chemical flame retardant technology chemically bonds to polyurethane foam during polymerisation and is "expected to reduce leaching or migration" from consumer products to the environment.

The report refers to public health professionals and consumers becoming "increasingly concerned" about human exposure to chemical flame retardants. "Early warnings of health risks from exposure to some flame retardants were not heeded, leading to decades of continued use, coinciding with increased presence in humans and adverse health effects," it suggests.

The researchers tested four sets of chairs with:

- no flame retardant added to the polyurethane foam (control);
- organophosphate chemical flame retardant added to the polyurethane foam, identified as triphenyl phosphate
 (TPhP) and tertbutyl phenyl phosphates (TBPP mix);
- a proprietary 'reactive' chemical flame retardant added to the polyurethane foam; or
- no flame retardant added to the polyurethane foam, but a fibreglass barrier material added between the polyurethane foam and textile cover.

They detected TBPP and TPhP in the air and settled dust around chairs with added organophosphate flame retardants. But they did not find any indication that the reactive flame retardant was released.

Average daily doses of TPhP released from the organophosphate flame retardant chair revealed that the most significant human pathway is dermal transfer, followed by ingestion and inhalation. Children would receive the highest exposure of TPhP flame retardant through ingestion, due to the primary exposure route of frequent hand-to-mouth contact with settled dust, suggest the researchers.

When they set fire to the chairs, they found that the barrier material had a "remarkable impact" on the burn parameters of the upholstered chair, whereas the flame retardants did not. The barrier was far more effective than the flame retardants at slowing burning, leading to lower levels of volatile organic chemicals and smoke being released, at a lower temperature.



Dr Emma Davies

Reporter

Further Information:

- UL report
- Press release

Senators urge EPA to extend methylene chloride protection to workers

29 April 2019 / Built environment, Solvents, TSCA, United States

Twenty-two US Senate Democrats have written to EPA Administrator Andrew Wheeler and agency toxics head Alexandra Dunn, expressing concern at the decision to exclude commercial uses from the methylene chloride ban the agency <u>announced</u> in March. In the 26 April letter, the senators urge the agency to finalise a more comprehensive ban.

The move comes hot on the heels of a lawsuit jointly <u>filed</u> by five NGOs and two mothers whose sons died after using the substance.

Methylene chloride is a solvent commonly used in paint strippers. The EPA's own 2014 assessment of the substance <u>concluded</u> that it can cause harm to the central nervous system, liver and kidney toxicity and cancer. Since a ban was <u>proposed</u> in January 2017, there have been a number of <u>deaths</u> associated with exposure to the substance.

The announcement that the final rule will not cover commercial uses resulted in protests from both Democratic lawmakers and NGOs.

Meanwhile, the EPA has looked for <u>feedback</u> on its advanced notice of proposed rulemaking (ANPRM) for a programme of "training, certification, and limited access requirements", aimed at mitigating the substance's risk.

However, the senators – led by Chuck Schumer (D-New York), Tom Carper (D-Delaware) and Tom Udall (D-New Mexico) – write in their letter that the "failure to protect commercial users of methylene chloride in its ban is likely to lead to more illnesses and deaths that are entirely preventable".

They also argue that the methylene chloride rule flies in the face of the 2016 updates to TSCA, which specifically charges the agency with protecting "potentially exposed or susceptible subpopulations". They cite the EPA's own determination that workers are particularly vulnerable to the substance's risks, and encourage it to withdraw the ANPRM and finalise an across-the-board ban on the substance.

"Given the dozens of deaths of workers, among even those who had been properly equipped and trained to protect themselves against methylene chloride exposure, EPA's failure to protect commercial users of methylene chloride in its ban is likely to lead to more illnesses and deaths that are entirely preventable," the letter continues.

The EPA will accept comments on the worker training ANPRM until 28 May.



Lisa Martine Jenkins

Americas reporter

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- Lawsuit filed over TSCA methylene chloride paint remover ban
- US EPA identifies cancer risks with DCM paint strippers
- US EPA proposes prohibitions on methylene chloride, NMP
- US EPA commits to act on methylene chloride paint strippers
- Congressional Democrats criticise methylene chloride rule as 'inadequate'
- US EPA seeks comments on workplace programme for methylene chloride
- US EPA round-up

Further Information:

Letter to EPA

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